



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Coram: D. K. Kemei - J

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 20 OF 2019

PRASUL JAYANTILAL SHAH.....1ST PETITIONER

MEGVEL CARTONS LIMITED.....2ND PETITIONER

VERSUS

INSPECTOR GENERAL OF

THE NATIONAL POLICE SERVICE.....1ST RESPONDENT

THE OFFICER IN CHARGE

ATHI RIVER POLICE STATION.....2ND RESPONDENT

THE DIRECTOR OF

PUBLIC PROSECUTIONS.....3RD RESPONDENT

DIESEL SELFCARE LIMITED.....4TH RESPONDENT

JUDGEMENT

1. The petitioners filed this petition in which they sought that :

a) The honourable court be pleased to hold and declare that the 1st, 2nd and 3rd respondents herein have acted in violation of the provisions of the Constitution of Kenya, 2010 and the national values and principles and values of public service embodied in article 232 of the Constitution of Kenya, 2010.

b) The honourable court be pleased to hold and declare that the 1st to 4th respondents herein have infringed on, infringed and violated the petitioner's right to human dignity and freedom and security or person decreed and protected under Articles 28 and 29(a) of the Constitution of Kenya, 2010.

c) The honourable court be pleased to hold and declare that the 1st to 3rd respondents herein have infringed on, infringed and violated the petitioner's right to fair administrative action decreed and protected under Article 47 of the Constitution as read with the provisions of the Fair Administrative Action Act, 2015.

d) The honourable court be pleased to hold and declare that the 1st to 3rd respondents herein have infringed on, infringed and violated the petitioner's right to access to justice and fair hearing decreed and protected under Articles 48 and 50(1) of the Constitution of Kenya, 2010.

e) The honourable court be pleased to hold and declare that the proceedings in Criminal case No. 238 of 2019 Republic v Prasul Jayantilal Shah are illegal, unconstitutional, and in contravention of the human rights and fundamental freedoms under the

Constitution of Kenya, 2010 and the laws of Kenya and is hence null, void and of no effect.

f) The honourable court be pleased to hold and declare that the charges in Criminal case No. 238 of 2019 Republic v Prasul Jayantlal Shah are in contravention of the stay orders issued by the Court of appeal on the 20th day of April 2018 in Civil application No. 64 of 2018 (UR 56 of 2018) Megvel Cartons Limited v Diesel Care Ltd, the Registrar of Titles & The Commissioner of Lands and Civil application No. 65 of 2018 (UR 57 of 2018) Megvel Cartons Limited v Diesel Care Ltd, the Registrar of Titles & The Commissioner of Lands

g) An order of prohibition do issue prohibiting the Respondents herein by themselves, their servants, agents from arresting, harassing or intimidating the petitioners on issues touching the ownership of LR No. 1504/11 (I.R 85400) and LR No. 25064 (I.R 85088) situated in Mavoko, Kajiado County(sic).

h) The honourable court be pleased to award the petitioners general damages against the Respondents herein jointly and severally for breach of his fundamental rights and freedoms.

i) The costs consequent upon this petition be borne by the respondents in any event on an indemnity basis

j) The honourable court do make any such other or further orders as it may deem just and expedient in the circumstances to remedy the violation of the petitioner's fundamental rights.

2. The 1st petitioner is indicated as a Kenyan citizen working as the managing director of the 2nd petitioner.

3. The 2nd petitioner is indicated as a limited liability company incorporated in the Republic of Kenya and the owner of the parcel of land LR 25064(IR 85088) situated in Mavoko, Machakos County.

4. 1st Respondent in the petition is the **Inspector General of the National Police Service** of the Republic of Kenya an independent office created under Article 245 of the Constitution of Kenya.

5. The 2nd Respondent is the Officer in charge, Athi River Police Station, sued in his capacity as the officer in charge of the Police station charged with handing the suit that is the subject matter of the petition.

6. The 3rd Respondent is the **Director of Public Prosecutions** an office established under Article 157 of the Constitution (hereinafter referred to as the DPP)

7. The 4th Respondent, **Diesel Care Limited** (hereinafter referred to as Diesel) is a limited liability company.

8. The events that constitute the background to this petition are as indicated in the petition dated 28th June, 2019 and are in effect complaints against the actions of the various state officers and offices as well as a private company. The events as gleaned from the face of the petition are that the court in ELC 166 of 2011 Diesel Care Limited v Megvel Cartons Limited & 2 Others nullified the title to LR 25064 (I.R. 85088) and appeals were filed in the Court of Appeal together with applications for stay of execution pending determination of the appeal. The stay application was granted and according to counsel for the petitioner, the order of the Court of Appeal stayed the findings of the Environment and Land Court nullifying the 2nd petitioner's title to LR No. 25064 (I.R. 85088). It was counsel's averment that despite the stay of judgement and decree of the Environment and Land Court, the 4th respondent had continued to harass and intimidate the petitioners and in disregard of the stay orders. Counsel pointed out that the 1st petitioner was arrested and charged on 1.4.2019 in Criminal case No. 238 of 2019 Republic v Prasul Jayantlal Shah with the offence of forcible detainer, forgery and conspiracy to defraud yet the charges are false and baseless in view of the stay of the findings of the Environment and Land Court with regard to the question of ownership of LR No. 1504/11(IR 85400) that is also the subject of the appeals 70 and 71 of 2018 in the Court of Appeal. According to counsel, the Respondents' actions lack legality, procedural propriety and fail the test of constitutionality and legality.

9. The facts upon which the petition is grounded as deponed in the affidavit of the 1st petitioner are that he was arrested and charged on 1st April, 2019 with forcible detainer, forgery and conspiracy to defraud and released on a cash bail of Kshs 200,000/-. The deponent averred that the charges are baseless, false, illegal, unreasonable, malicious and in abuse of power as well as in contempt of the Court of Appeal orders that stayed the judgement and Decree of the Environment and Land Court. The deponent also lamented that the police had cordoned off the property to keep the petitioners out whereas goons hired by the 4th respondent engaged in wanton destruction and theft of property. To the affidavit was annexed a copy of the title deed, the plaint and counterclaim in the proprietorship dispute in the ELC, a copy of the judgement of the said court, a copy of the memorandum of appeal in the Court of Appeal, a copy of the ruling from the Court of Appeal dated 20.4.2018, copy of the charge sheet and bail receipt in the Criminal case No. 238 of 2019 Republic v Prasul Jayantlal Shah, as well as the letter issued to the 1st to 3rd respondents challenging their actions yet there was a decision from the Court of Appeal.

10. In reply to the petition was an affidavit deponed by Pc George Karanja, the investigating officer in Criminal case No. 238 of 2019 Republic v Prasul Jayantlal Shah, sworn on 6.9.2019. The deponent reproduced the provisions of Article 243, 245 and 157 of the constitution and averred that the complaint made by Joseph Claudio trading as Diesel Care Ltd had been investigated and disclosed that criminal offences were committed resulting in a file that was forwarded to the 3rd respondent who directed that the petitioner be arrested. It was averred that the 3rd respondent in exercise of his constitutional powers charged the petitioner. It was averred that by dint of Section 193A of the Criminal Procedure Code, a civil matter could run concurrently with a criminal matter and therefore despite the Civil Appeal in cases 70 and 71 of 2018, there was a criminal aspect in relation to the ownership of the parcel of land I.R. No. 85088/1 L.R 25064. The deponent pointed out to court that there was an element of forgery in respect of the signatures on the grant No. IR 85088 LR 25064 and that the deed plan for LR 25064 was not supported by any records. The deponent averred that there was no violation of the orders of the Court of

Appeal as the same only stayed execution of the judgement and decree issued by the ELC case 166 of 2011 but not the respondents from conducting their mandate as enshrined in Article 244 of the Constitution and Section 45 and 49 of the Police Act. It was averred that during the conduct of trial of **Criminal case No. 238 of 2019 Republic v Prasul Jayantlal Shah** there will be no infringement of the petitioner's right to fair trial as he shall have an opportunity to cross examine the witnesses and challenge the evidence of the prosecution and equally will have a right to present his evidence before the court. Annexed to the affidavit is a copy of the charge sheet, statement of a former commissioner of lands, copy of statement by a representative from Survey of Kenya.

11. There is on record a supplementary affidavit also deponed by Pc George Karanja on 12.11.2019. He averred that he obtained a forensic report in respect of signatures that touch the grant in dispute in **Criminal case No. 238 of 2019 Republic v Prasul Jayantlal Shah** to the effect that the signature was a forgery. A copy of the report was annexed to the affidavit.

12. The 4th respondent vide replying affidavit deponed on 11.11.2019 opposed the petition. The affidavit was deponed by Joseph Karuoro Claudio, indicated as the managing director of Diesel Care Limited. He averred that the charges against the petitioners are supported by evidence that is yet to be tabled before the court and as such the criminal process is not meant to harass the petitioners or subvert justice. It was averred that the petitioners had not demonstrated how their rights had been infringed or how the violations of Articles 2(4), (5), & (6), 10, 28, 29(a), 39, 47(1) & (2), 48 and 50(1) of the Constitution have occurred.

13. There is a further affidavit deponed by the 1st petitioner in rejoinder to the 3rd respondent's replying affidavit and challenged the 3rd respondent for failing to interrogate the entire process that led to the issuance of the disputed grant. The deponent attached documents that spoke about his averment that he had explained how he came to obtain what was the title to the suit property LR No. 25064 (I.R. 85088).

14. The petition was canvassed vide written submissions that are duly on record. The respective counsels highlighted submissions on 7.2.2020. According to counsel for the petitioners vide submissions dated 28.11.2019, the alleged forgery could not be ascribed to the petitioners. Counsel placed reliance on the cases of **R v Chief Magistrates Court Nairobi & 4 Others (2013) eKLR** and **Commissioner of Police and Director of Criminal Investigations Department v Kenya Commercial Bank & Others (2013) eKLR** and submitted that the signature examination was done after the petitioner was arrested and charged with the offence of forgery and therefore it was used to justify the charge.

15. According to counsel, the offence of forcible detainer was not sustainable in view of the Court of Appeal orders in Civil Application No. 64 of 2018 (UR 56 of 2018) **Megvel Cartons Limited v Diesel Care Ltd, the Registrar of Titles & The Commissioner of Lands and Civil application No. 65 of 2018 (UR 57 of 2018) Megvel Cartons Limited v Diesel Care Ltd, the Registrar of Titles & The Commissioner of Lands.** Learned counsel placed reliance on the case of **Bishop Zecharia Magondu Kimani v Inspector General of Police & 3 Others (2016) eKLR** where it was observed that charging with the offence of forcible detainer was improper in view of the status quo orders and a pending civil suit that challenged the ownership of the suit land.

16. Learned counsel submitted that the charges infringed on the petitioners' rights because there was a dispute on the ownership of the suit land and the signature examination was done after the petitioner was already charged. Counsel submitted that the 4th respondent had never been in occupation of the land since the findings of the ELC court were stayed in **Civil application No. 64 of 2018 (UR 56 of 2018) Megvel Cartons Limited v Diesel Care Ltd, the Registrar of Titles & The Commissioner of Lands** and **Civil application No. 65 of 2018 (UR 57 of 2018) Megvel Cartons Limited v Diesel Care Ltd, the Registrar of Titles & The Commissioner of Lands.** Further, counsel challenged the manner in which the land was allocated to the 4th respondent.

17. In reply, Mr Machogu for the 3rd respondent submitted that the petitioner was charged with an offence known in law and the decision to charge was in exercise of powers guaranteed under Article 157(6) of the Constitution. On the issue of prohibition of prosecution, counsel in placing reliance on the case of **Njuguna S. Ndungu v EACC & 3 Others (2014) eKLR** submitted that during the arrest and preferring of charges against the petitioner, none of his rights were breached or violated. On the issue of whether this court should sanction the charges, counsel placed reliance on the case of **Ronald Leposo Musengi v DPP & 3 Others (2015) eKLR** and submitted that evidence is yet to be tendered and that proceedings of this nature do not go to the merits of a case but only the process. Counsel urged the court not to usurp the jurisdiction of the trial court that is to determine whether the prosecution had sufficient evidence to warrant a conviction against the petitioner. Counsel in conclusion urged this court to leave it to the trial court to determine the merits of the criminal case and not to interfere with the trial process.

18. Learned counsel for the 4th respondent vide submissions dated 4.2.2020 submitted that the petitioners have failed to demonstrate the manner that their rights had been violated. Counsel noted that the petitioners have not shown how their right to a fair trial had been violated or how their right to ownership of property had been violated. According to counsel, the charges preferred against the petitioners comprised of laws recognized by the Laws of Kenya and nothing barred the 1st respondent from investigating the 1st petitioner or the 3rd respondent from prosecuting him. Learned counsel in placing reliance on Article 157 and 160 of the Constitution argued that there is no demonstration of excesses of constitutional mandate or statutory power or actions contrary to statute or actions in bad faith or actions in abuse of court process. The court was urged to dismiss the petition with costs.

19. Having considered the pleadings and the submissions of counsel, the following issues arise for determination.

a) Whether the 1st to 3rd respondents' conducted themselves towards the petitioners in a manner that contravened Article 10, 232, 20(1), 2(4), 28, 29(a), 39, 47 and 50(1) of the Constitution.

b) Whether the commencement of the forgery, forcible detainer and conspiracy to defraud charges against the Petitioners contravened Article 232, 28, 29(a), 47, 48 and 50(1) the Constitution.

*c) Whether the sequential commencement of **Criminal case No. 238 of 2019 Republic v Prasul Jayantlal Shah** contravened Article 232, 28, 29(a), 47, 48 and 50(1) Constitution.*

*d) Whether the cumulative effect of the conduct of the respondents towards the Petitioners in matters connected with the **Criminal case No. 238 of 2019 Republic v Prasul Jayantlal Shah** violated Article 232, 28, 29(a), 47, 48 and 50(1) of the constitution.*

20. The cited provisions in the prayers sought in paragraph 61 of the petition are reproduced verbatim hereunder and are that;

47. Fair administrative action

- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
- (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—
 - (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and (b) promote efficient administration.

48. Access to justice

The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.

50. Fair hearing

- (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

28. Human dignity

Every person has inherent dignity and the right to have that dignity respected and protected.

29. Freedom and security of the person

Every person has the right to freedom and security of the person, which includes the right not to be—

- (a) deprived of freedom arbitrarily or without just cause;

232. Values and principles of public service

- (1) The values and principles of public service include—
 - (a) high standards of professional ethics;
 - (b) efficient, effective and economic use of resources;
 - (c) responsive, prompt, effective, impartial and equitable provision of services;
 - (d) involvement of the people in the process of policy making;
 - (e) accountability for administrative acts;
 - (f) transparency and provision to the public of timely,

Accurate information;

- (g) subject to paragraphs (h) and (i), fair competition merit as the basis of appointments and promotions;
- (h) representation of Kenya's diverse communities; and
- (i) affording adequate and equal opportunities appointment, training and advancement, at all levels of the public service, of—
 - (i) men and women;

(ii) the members of all ethnic groups; and

(iii) persons with disabilities.

(2) The values and principles of public service apply to service in—

(a) all State organs in both levels of government; and

(b) all State corporations.

(3) Parliament shall enact legislation to give full effect to this Article.

39. Freedom of movement and residence

(1) Every person has the right to freedom of movement.

(2) Every person has the right to leave Kenya.

(3) Every citizen has the right to enter, remain in and reside anywhere in Kenya.

20. Application of Bill of Rights

(1) The Bill of Rights applies to all law and binds all State organs and all persons.

21. The 1st petitioner had been charged before the trial court in *Criminal case No. 238 of 2019 Republic v Prasul Jayantlal Shah* and was given an opportunity to seek bail which was their constitutional right. He had been charged with three offences (forgery, forcible detainer and conspiracy to defraud) that are provided for under the Penal Code. He was entitled to the benefit of the presumption of innocence and was granted bail. There is nothing to show that the 1st to 3rd respondents impeded his process of getting that bail. I am unable to see how the 1st to 3rd respondents impeded the petitioners' rights to fair trial or freedom of movement.

22. On the other hand, Article 159 and 160 of the Constitution is to the effect that Judicial power is derived from the people and shall be exercised by the Courts established under the Constitution in the name of the people and in conformity with the law and with the values, norms and aspirations of the people. It is also to the effect that in the exercise of this judicial power, the courts are independent and are not subject to the control or direction of any person or authority. The role to be exercised by the judiciary is as per the constitution and as such the acts of the 1st to 3rd respondents cannot be attributed to the judiciary. In this regard, the judiciary cannot purport to play a role in interfering with the exercise of judicial power in an attempt to pit actions attributable to the executive as against the exercise of judicial power. I therefore answer the 1st issue in the negative.

23. With regard to the 2nd and 3rd issues, the petitioner imputed that the 1st to 4th respondents in an attempt to prevent the petitioners from enjoying a court order presented the instant charges. They also present a view that the 1st to 3rd respondents after charging them, commenced investigations after charging the petitioners so as to justify charges that had been preferred against the petitioners. It was submitted by counsel that the actions were akin to manipulation of the system. I take note of the cited case of **Bishop Zecharia Magundu Kimani v Inspector General of Police & 3 Others (2016) eKLR** and distinguish it from the instant case where there are no status quo orders whereas in the cited case, there were status quo orders pending the determination of the main suit. The stay orders from the Court of Appeal was in respect to the ELC judgement in **Civil Case Number 166 Of 2011** and it did not bar the Dpp from carrying his duties under Article 157 of the Constitution. The 3rd respondent supported his actions in commencing criminal proceedings and pointed to the court that Section 193A of the Criminal Procedure Code allowed him to do so. The same provides that "*Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.*"

24. According to counsel for the 4th respondent, the offences with which the petitioners are charged are a creature of the Penal Code and the DPP can institute criminal proceedings as guaranteed by Article 157 of the Constitution.

25. There is no dispute that the petitioners were charged in the Magistrates court for three criminal offences. At the time when the charges were preferred, there was a ruling from the Court of Appeal directed not to the 1st to 3rd respondents but to the 4th respondent and other persons not party to the petition that execution of judgement and decree dated 26.1.2018 and the ruling and order dated 23.2.2018 were stayed. I am yet to be availed with the contents of the order dated 23.2.2018 and on the other hand I note that there is only a judgement dated 26.1.2018 from the ELC court that cancelled the grant that is the subject of the appeal and issued an injunction to restrain the petitioners in the instant petition from interfering with the quiet possession of the land that is the subject of the appeal. The appeal is yet to be heard and I do not see how the criminal trial will in any way answer the matters pertaining to ownership of the suit land. There is nothing that has been presented to the court to show that the petitioners had been denied a fair trial in the Magistrates court and in any event the trial is yet to commence. There is an appeal system that will be prepared to hear the petitioners if they are not satisfied with the outcome of the criminal trial in the magistrate's court, and as it is this court cannot be seen to interfere with the mandate of the trial court in a matter that is yet to be heard and evidence yet to be tendered. I therefore answer the 2nd and 3rd issues in the negative.

26. I have considered the nature and content of the evidence that was adduced in this petition. The subject of the appeal is the ownership of the suit land and the standard is on a balance of probabilities. The subject of the criminal trial is forgery, fraud and forcible detainer. The standard of proof is beyond reasonable doubt; the court shall address itself to this before coming up with its final determination on the criminal matter. I find that there is no evidence presented to show that the magistrate's court lacks jurisdiction to handle the trial; that the 1st to 3rd respondents have the mandate to charge and prosecute an offence that has been brought to their attention. The magistrate's court even in realization of the petitioners' right to presumption of innocence granted them bail. In alleging that the respondents disobeyed the orders of the Court of Appeal, the petitioners have misunderstood the effect, legal implication and consequences of the orders granted by the Court of Appeal. The petitioners claim that they should not be prosecuted while the civil appeal is still pending. Indeed, the Court of Appeal has since granted an order of stay of execution of the judgement in the ELC case number 161 of 2011 pending determination of the appeal. By dint of section 193A of the Criminal Procedure Code criminal proceedings can be instituted side by side with civil proceedings as there is no bar to the DPP from mounting criminal proceedings. I am not convinced that the petitioners are likely to suffer any double trouble if the said proceedings are allowed to go on since their constitutional rights enshrined in the constitution will be accorded to them in both judicial forums. The order of stay only affected the judgement of the ELC and not any other proceedings. I am not satisfied that the criminal proceedings are an abuse of the court process since there is a complaint duly lodged with the DPP. I associate myself with the finding of Majanja J in **Musyoki Kimanthi Vs Inspector General of Police & 2 Others (2104) eKLR** where he held as follows;

“In light of the mandate conferred upon the DPP in Article 157 of the constitution, the High Court, therefore, ought not interfere with the above mandate unless cogent reasons are given thus: that the DPP has acted without due regard to public interest, against the interest of the administration of justice and has not taken account of the need to prevent and avoid abuse of court process. Although the DPP has the discretion to determine which complaint should lead to criminal prosecution, the High Court may intervene where that discretion has been abused or where the effect of the proceedings result in the abuse of the court process.”

It is instructive to note that the 1st, 2nd and 3rd respondents were not parties in the ELC case number 166 of 2011 as well as in the appeal lodged before the Court of Appeal and that the order of stay only targeted the judgement in the said case and not other criminal cases. The complaint lodged by the 4th respondent appears to be purely criminal in nature requiring the DPP to act upon. Even if the petitioners might have a good defence to the criminal case this court will be reluctant to interfere with the trial as both petitioners and the DPP will have their day in that court. I am also in agreement with the decision in **Ronald Leposo Musengi V Director of Public Prosecution & 3 others (2015) eKLR** where it was held:

“The trial courts are better placed to consider the evidence and decide whether or not to place an accused on their defence, the court may even after placing the accused on their defence the court may well proceed to acquit the accused. Our criminal process also provide for a process of an appeal where the accused if aggrieved by the decision in question. Apart from that, there is also an avenue for compensation by way of a claim for malicious prosecution. In other words, unless the petitioner demonstrates that the circumstances of the impugned process render it impossible for the petitioner to have a fair trial, the High Court ought not to interfere with the trial simply on the basis that the petitioner's chances of being acquitted are high. In other words, the High Court ought not to transform itself into a trial court and examine minutely whether or not the prosecution is merited.”

If the respondents maintain that the issues raised in the criminal case now pending before the Mavoko law courts are not likely to be determined in the pending civil appeal, then they ought to be allowed to proceed with it in the said court where all the parties will be given their day in court. In any case the petitioners already enjoy orders of stay and are unlikely to suffer any prejudice as they go through the criminal process as well as the civil appeal. The discovery of a new criminal complaint by the 4th respondent after the determination of the ELC case entitles it to present it to the DPP for consideration and action even if a civil appeal against the judgement had been filed by the petitioners. Suffice to add that the matters for determination in both the civil and criminal case are substantially different and that the issues raised in the criminal case are unlikely to be resolved in the civil case. The commencement of the criminal case has not in my view prejudiced the rights of the petitioners and that their rights under the constitution have not been infringed.

27. After analyzing the rival affidavits and submissions presented I come to the finding that the petitioners have not proved their case on balance of probabilities.

28. The declarations sought in this petition are stated in paragraph (a) to (f) which are produced verbatim from the petition. The petitioners have not proved their case hence the declarations sought cannot be granted as a result of my findings of fact and law during the determination of issues considered above. I therefore deny to grant the declarations sought in what is indicated as paragraphs (a) to (d), (7) and (e) of the petition.

29. The petitioners also sought for two orders stated in paragraph (f) to (i) of the petition. The first order sought is for a prohibition of harassment of the petitioners. I have not found any such harassment; what I have seen is an exercise of constitutional mandate and therefore I decline to grant prayer (f). I am not satisfied that there are activities that the 1st to 4th respondents have engaged in that are in breach of the fundamental rights and freedoms of the petitioners. The 1st petitioner shall be tried before an independent and impartial tribunal; they enjoyed their right to be presumed innocent till proved guilty and granted bail; I see no evidence to suggest that they had been denied access to court or prevented from moving freely within Kenya and as such this court cannot prevent the prosecution of the petitioners especially now that they have not established that their rights have been violated. In any event should the petitioners establish that there has been disobedience and or non-compliance with the orders of stay of execution issued by the Court of Appeal then they are at liberty to institute contempt proceedings against the contemnors.

30. The strength or weakness of the prosecution case will be established once the trial is allowed to proceed and this court cannot go into the merits of that case as there is the magistrate's court that is mandated to handle the same in accordance with the Magistrates Courts Act, 2015 as read together with the constitution.

31. In the result it is my finding that the petition lacks merit and is dismissed. Each party to bear their own costs.

It is so ordered.

Dated and delivered at Machakos this 29th day of May, 2020.

D. K. Kemei

Judge